

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

FRED ERBY,	)	
	)	
Petitioner,	)	
v.	)	Civil Action
	)	No. 09-3132-CV-S-RED-H
MARTY C. ANDERSON, Warden,	)	
United States Medical Center for	)	
Federal Prisoners,	)	
Respondent.	)	

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he challenges his confinement. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner's claims are without merit, it will be recommended that he be denied leave to proceed in forma pauperis.

As grounds for relief in habeas corpus, petitioner alleges that he is illegally in custody, and that he is entitled to release because he is no longer mentally ill.

A review of the file and records in the case indicates that petitioner was committed to the custody of the Attorney General, pursuant to 18 U.S.C. § 4246, by the United States District Court for the Western District of Missouri on October 15, 2008. United States v. Erby, 08-3022-CV-S-RED (W.D. Mo. 2008). The judgment was affirmed by the Eighth Circuit Court of Appeals on April 10, 2009. (Appeal No. 09-1284). Regardless of petitioner's assertions, the record indicates that petitioner is lawfully confined at the present time for mental health care and treatment pursuant to

§ 4246. Therefore, it must be recommended that the petition for habeas corpus relief be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.<sup>1</sup>

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis and that the petition herein for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England  
JAMES C. ENGLAND  
Chief, United States Magistrate Judge

Date: 10/29/09

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<sup>1</sup> Petitioner has 10 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.